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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Derrick Berry Fontenot,

10 Petitioner,

11 v.

12 Charles Ryan, et al.,

13 Respondents.
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No. CV-15-00089-TUC-JGZ

ORDER

15 Pending before the Court is a Report and Recommendation issued by United
16 States Magistrate Judge Eric J. Markovich that recommends denying Petitioner's Petition
17 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 40.)

18 A review of the record reflects that the parties have not filed any objections to the
19 Report and Recommendation and the time to file objections has expired. As such, the
20 Court will not consider any objections or new evidence.

21 The Court has reviewed the record and concludes that Magistrate Judge
22 Markovich's recommendations are not clearly erroneous. *See* 28 U.S.C. § 636(b)(1);
23 Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999);
24 *see also Conley v. Crabtree*, 14 F.Supp.2d 1203, 1204 (D. Or. 1998).

25 Before Petitioner can appeal this Court's judgment, a certificate of appealability
26 must issue. *See* 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of
27 Appellate Procedure 22(b) requires the district court that rendered a judgment denying
28 the petition made pursuant to 28 U.S.C. §2254 to "either issue a certificate of

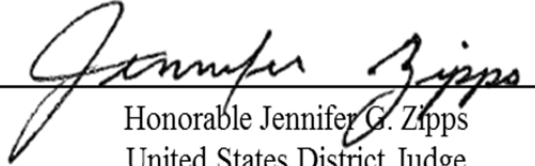
1 appealability or state why a certificate should not issue." Additionally, 28 U.S.C.
2 §2253(c)(2) provides that a certificate may issue "only if the applicant has made a
3 substantial showing of the denial of a constitutional right." In the certificate, the court
4 must indicate which specific issues satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A
5 substantial showing is made when the resolution of an issue of appeal is debatable among
6 reasonable jurists, if courts could resolve the issues differently, or if the issue deserves
7 further proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review
8 of the record in light of the standards for granting a certificate of appealability, the Court
9 concludes that a certificate shall not issue as the resolution of the petition is not debatable
10 among reasonable jurists and does not deserve further proceedings.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 1. Magistrate Judge Markovich's Report and Recommendation (Doc. 40) is accepted
13 and adopted;
- 14 2. Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is DENIED;
- 15 3. This case is dismissed with prejudice. The Clerk of the Court shall enter judgment
16 accordingly.

17 Dated this 11th day of January, 2018.

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Honorable Jennifer G. Zipps
United States District Judge